

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

THE UNITED STATES OF AMERICA, *ex rel.*  
JULIE LONG,

*Plaintiffs,*

v.

JANSSEN BIOTECH, INC.,

*Defendant.*

Civil Action No. 16-CV-12182-FDS

**DEFENDANT JANSSEN BIOTECH, INC.’S SUR-REPLY IN OPPOSITION TO**  
**RELATOR’S MOTION TO COMPEL**  
**(Leave to file granted on January 20, 2023)**

Janssen submits this Sur-reply to Relator’s Motion to Compel (ECF No. 345) to update the Court on the status of the production of documents raised by Relator in her Motion, and in an effort to narrow the disputes for the upcoming January 23, 2023 hearing.

In Janssen’s January 2, 2023 opposition to Relator’s Motion to Compel (ECF No. 355), Janssen stated that it had been working in good faith to produce the documents raised by Relator’s Motion that are not in dispute and would be doing so as part of the ongoing productions it has made since the Court issued its order. See *id.* at 3. Yet, Relator contends in her Reply (ECF No. 359) that Janssen is not acting in good faith and is impeding discovery. See *id.* at 9. This is unfounded and untrue, as demonstrated by Janssen’s continuing document productions.

Since filing its opposition to Relator’s Motion, Janssen has been able to finish its search and collection of the additional categories of documents identified in Janssen’s opposition as “Ongoing,” and to prepare them for production to Relator on January 20, 2023. As an update,

we have pasted below the table included in Janssen’s opposition brief, and we have added a column with updated information where applicable:

| <b>Relator’s Request</b>  | <b>Court’s Order</b>  | <b>Janssen’s Production as of 1/2/23</b>  | <b>Update as of 1/20/23</b> |
|---|---|---|-----------------------------|
| “The document retention policies,” ECF No. 346, at 20.  | Janssen has produced “its current document retention policy” and is ordered to produce “prior versions of its document and retention policies.” ECF No. 284, at 9.  | <b>No Dispute, Production Ongoing.</b> Janssen is searching for and will produce prior versions of its document retention policies. <i>See</i> ECF No. 329–3, at 9.   | <b>Production Completed</b> |
| “The communications with the Department of Justice concerning this action, without limitation,” ECF No. 346, at 20. | Relator’s request for “what information Janssen disclosed to U.S. Department of Justice concerning this action” is allowed, ECF No. 284, at 7; “requests for production of documents during the first phase of discovery shall be generally limited to documents created through February 2016,” but for two narrow categories of documents “created between February 2016 and February 2020,” ECF No. 320, at 4. | <b>Dispute Pending in Janssen’s Motion to Compel (ECF 329).</b> Janssen has agreed to produce communications with the Department of Justice concerning “this action” from its initiation on October 28, 2016, through February 2020. The parties’ dispute as to whether Janssen is required to produce these documents from February 2020 through the present is before the Court in Janssen’s Motion to Compel. ECF No. 329, at 13–14. |                             |
| “The compliance policies and guidance related to providing services or support to physicians,” ECF No. 346, at 20.  | “Relator complains that Janssen has not provided all of the requested compliance guidance and policies. The requested documents are certainly relevant and discoverable. The court credits Janssen’s response that it continues to look for such documents and is producing them.” ECF No. 284, at 5 (citations omitted).   | <b>No Dispute, Production Ongoing.</b> Janssen has produced the requested compliance policies and guidance for the time period of 1998 through February 2016. Janssen is searching for and will produce requested compliance policies and guidance for the period of February 2016 to February 2020. <i>See</i> ECF No. 329-3, at 10.   | <b>Production Completed</b> |
| “All contracts or agreements with outside consultants, such as Akin Gump, The Lash                                  | “In RFP 7, relator requested that Janssen produce: ‘All contracts or agreements between you and any Outside   | <b>No Dispute, Production Completed, Except for Inclusion of Akin Gump.</b> Janssen has produced  |                             |

| Relator's Request   | Court's Order   | Janssen's Production as of 1/2/23   | Update as of 1/20/23        |
|---|---|---|-----------------------------|
| Group, The Resource Group, Thomas J. Paul, Inc., Xcenda, and Xillix, related to: (a) providing advice or information to accounts in Relator's former territory; or (b) creation of presentations or programming utilized in connection with providing IOI Support in Relator's former territory," ECF No. 346, at 17. | Consultant related to: (a) providing advice or information to IOI Accounts; or (b) creation of presentations or programming utilized by ABSs in connection with providing IOI Support.' The court limits this request to the accounts in question in Pennsylvania. . . . The court orders Janssen to provide the documents it finds after a reasonable search, going back to the start of the programs in question in Pennsylvania." ECF No. 284, at 8. | the requested contracts for Xcenda, MCV & Associates, The Lash Group, The Resource Group, TJ Paul, Inc., and Xillix, Inc. <i>See</i> ECF No. 329–3, at 9. Relator is not entitled to Janssen's contracts with the law firm Akin Gump, as discussed in Section II.C below.                 |                             |
| All documents and information responsive to Request for Production 16, ECF No. 346, at 20.  | "The court orders Janssen to make a reasonable effort to collect the information pertaining to the accounts in question in Pennsylvania, starting on the date when Janssen began providing IOI support to the physician practices in Pennsylvania," from centralized databases and other sources. ECF No. 284, at 6–7.  | <b>No Dispute, Production Ongoing.</b> Janssen is conducting supplemental searches in all relevant repositories and will produce the requested information pertaining to the eleven Phase 1 Accounts according to additional search parameters requested by Relator. ECF No. 329–6, at 7. | <b>Production Completed</b> |
| Fees paid to outside consultants, ECF No. 346, at 20.   | "Janssen is ordered to produce documents responsive to request for production no. 20, concerning the costs of certain compensation, etc. that Janssen paid for the items listed, such as programs, salaries and consultants. If the information is only available for nation-wide services then those documents shall be provided." ECF No. 237.  | <b>No Dispute, Production Completed.</b> Janssen has produced information responsive to Relator's Request for Production 20. <i>See</i> ECF No. 329–3, at 11.   |                             |
| Karen Trahan's and Relator's documents  | Relator's request for documents from Relator's and  | <b>No Dispute, Production Completed.</b> Janssen produced   |                             |

| Relator's Request  | Court's Order   | Janssen's Production as of 1/2/23   | Update as of 1/20/23 |
|--|---|---|----------------------|
| that predate October 28, 2006, ECF No. 346, at 20.                                       | custodian Karen Trahan's files that pre-date October 2006 is allowed. ECF No. 284, at 9–10.   | responsive, non-privileged ESI from the files of Relator Julie Long and Karen Trahan identified through a review of documents identified by the parties' agreed-upon search terms in three productions between October 14, 2022, and November 11, 2022.   |                      |
| The communications with OIG and CMS/Medicare concerning this action, ECF No. 346, at 20. | Relator's requests for "whether Janssen ever sought guidance or an advisory opinion from HHS-OIG [Health and Human Services Office of Inspector General]" and "any communications it had with Medicare concerning its provision of the IOI Support to physician practices" is allowed. ECF No. 284, at 7. | <b><i>Dispute Pending in Janssen's Motion to Compel (ECF 329).</i></b> Janssen has confirmed that it did not seek an advisory opinion from OIG concerning the support services at issue and that it is not currently aware of any communications with Medicare concerning the programs at issue, but will produce any such communications if they are identified as Janssen's discovery efforts progress. Janssen has also produced the subpoenas it served on OIG and CMS in this action, and it has produced and will continue to produce any discovery actually received from these agencies. The parties' dispute as to whether Janssen is required to produce additional communications with OIG and CMS is before the Court in Janssen's Motion to Compel. ECF No. 329, at 13–14. |                      |

As reflected above, Janssen has worked in good faith to comply with the Court's order, and it hereby informs the Court that the production of these additional categories of documents is now complete.

Dated: January 20, 2023

/s/ Jason C. Raofield

Jason C. Raofield (BBO No. 641744)  
Ethan M. Posner (admitted *pro hac vice*)  
Sarah E. Tremont (admitted *pro hac vice*)  
Kristin Cobb (admitted *pro hac vice*)  
Nicholas Pastan (admitted *pro hac vice*)  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001  
(202) 662-6000  
jraofield@cov.com  
eposner@cov.com  
stremont@cov.com  
kcobb@cov.com  
npastan@cov.com

*Counsel for Defendant Janssen Biotech, Inc.*

**CERTIFICATE OF SERVICE**

I, Jason C. Raofield, counsel for Defendant Janssen Biotech, Inc., hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on this 20th day of January 2023.

/s/ Jason C. Raofield

Jason C. Raofield  
Covington & Burling LLP